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SJC-13100

FREDERICK PINNEY vs. COMMONWEALTH.

July 1, 2021.

Supreme Judicial Court, Superintendence of inferior courts.
Evidence, Buccal swab. Practice, Criminal, Discovery.

The defendant, Frederick Pinney, appeals from a judgment of a single justice of this court denying his petition for relief pursuant to G. L. c. 211, § 3.¹ We affirm.

Pinney stands indicted for murder. After his first trial ended in a mistrial, Pinney successfully obtained suppression of a preindictment buccal swab obtained by the Commonwealth. See Commonwealth v. Pinney, 97 Mass. App. Ct. 392, 393 (2020). The Commonwealth subsequently moved to obtain a postindictment buccal swab from Pinney, which the Superior Court allowed. Pinney sought relief in the county court, and a single justice of this court denied relief, in pertinent part, because the motion judge's decision was a "routine discovery ruling," and Pinney therefore "has an adequate alternative remedy in that he can raise the issue of the propriety of the order compelling the production of the buccal swab in a direct appeal, should he be convicted."

¹ The petition was originally filed as an application for leave to pursue an interlocutory appeal pursuant to Mass. R. Crim. P. 15 (a) (2). A single justice's denial of such an application is not appealable. See Commonwealth v. Santry, 469 Mass. 1001, 1001 (2014); Cowell v. Commonwealth, 432 Mass. 1028, 1028 (2000). However, the single justice treated the petition as one pursuant to G. L. c. 211, § 3, and we do the same.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a petitioner seeking relief from an interlocutory ruling of the trial court to "set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means." Pinney has failed to demonstrate the lack of an adequate remedy on direct appeal. As to that issue, Pinney argues that "[i]t would be fundamentally unfair to require [him] to go through a second trial that is infected from the outset with reversible error." It is well settled, however, that petitions for extraordinary relief under G. L. c. 211, § 3, are not substitutes for the normal trial and appellate process. And we have repeatedly stated that "[d]iscovery matters such as this are routinely addressed on direct appeal." Martinez v. Commonwealth, 475 Mass. 1001, 1001 (2016), citing Deming v. Commonwealth, 438 Mass. 1007, 1007 (2002). See generally Commonwealth v. Fontanez, 482 Mass. 22, 24-25 (2019). "If [Pinney] is convicted of any offense, he will have the opportunity to raise his issues in the ordinary appellate process." Martinez, supra.

The single justice did not err or abuse his discretion in denying relief.

Judgment affirmed.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Linda J. Thompson & John M. Thompson for the petitioner.